

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: Cattle and Beef)
Antitrust Litigation) File No. 20CV1319
) and 22MD3031
) (JRT/JFD)
)
)
) Minneapolis, Minnesota
) November 18, 2022
) 11:10 A.M.
)
)

BEFORE THE HONORABLE JUDGE JOHN R. TUNHEIM

UNITED STATES DISTRICT COURT JUDGE

AND

MAGISTRATE JUDGE JOHN F. DOCHERTY

UNITED STATES MAGISTRATE JUDGE

(STATUS CONFERENCE)

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15 Proceedings recorded by mechanical stenography;
16 transcript produced by computer.

11:10 A.M.

(In open court via video conference.)

THE COURT: This is status conference in In Re: Cattle and Beef Antitrust Litigation, 22-3031. Judge Docherty and I welcome everyone today.

Rather than going through and having people note their appearances which tends to take a little while because we have a lot of people on today, I'm going to have Ms. Arent just read through the list of names, and then we'll see if there is anyone else that we missed. Okay?

Go ahead, Heather.

COURTROOM DEPUTY: Okay. Daniel Herrera. Jennifer Sprengel. Patrick McGahan. Sean Cooper. Stacey Slaughter. William Caldes. Phil Iovieno. Daniel Hedlund. Daniel Karon. Jason Hartley. Joshua Rissman. Megan Jones. Michelle Looby. Blaine Finley. Abby Wolf. Kyle Pozan. Shana Scarlett. Patrick Ahern. Garth Yearick. Robert Kaplan. Sarah Jones. William Blechman. Douglas Patton. Michael Ponzoli. David Germaine. Alberto Rodriguez. Holly Horrell. Kevin Zhao. Jessica Nelson. Patrick Brookhouser. Sami Rashid. Benjamin Ellison. Chelsea Bung-Bollman. Susan Foster. Ulrike Connelly. I think that's everyone on my list.

THE COURT: Did we miss anyone who is here and

1 wishes to be noted for the record?

2 All right. Let's proceed. The first matter that
3 we want to talk about today I'm going to toss over to Judge
4 Docherty, the structured data production issue, the parties
5 wanted to discuss deadlines here.

6 Judge Docherty?

7 MAGISTRATE JUDGE DOCHERTY: Good morning,
8 everyone. On the agenda for this morning the first matter
9 is under discovery matters is structured data productions,
10 talking apparently about the setting of deadlines, and
11 Mr. Hartley, I believe you are going to be speaking for the
12 plaintiffs and Ms. Horrell for the defendants.

13 Mr. Hartley, do you want to be heard? You have
14 the floor.

15 MR. HARTLEY: I do. Thank you very much, and
16 good morning, Your Honor.

17 We believe the defendants should produce the
18 undisputed structured data that we requested a long time
19 ago on December 15th, just as defendants themselves
20 proposed to the Court in their submission ECF 36 just a
21 month ago.

22 Now, this is information we asked for in the
23 cattle RFPs in 2020, the DPPs asked for this information
24 back in October 2021. The prior deadline was September
25 1st, and that was moved to December 1st, and then in the

1 last submission the defendants asked to move that yet again
2 to December 15th, and we didn't object to that, although we
3 wanted to make sure that that date was going to hold.

4 Nothing has changed with respect to this
5 undisputed data, Your Honor, to justify another extension.
6 This collection and production shouldn't be impacted by the
7 entrance of the DAPs who were here a month ago when
8 defendants themselves proposed the December 15th deadline.

9 Structured data is usually produced very promptly
10 in an antitrust case. This is one of the longest times I
11 have ever waited in an antitrust case just to get
12 structured data. So why do we need this data so promptly?
13 The first reason, of course, is that all of the plaintiffs'
14 experts of course need time to process this data and ensure
15 we're comparing apples with apples when comparing the
16 different defendants' systems, and it takes time to
17 reconcile those systems.

18 But secondly and more importantly, Your Honor,
19 the DPPs have a settlement with JBS that was inked almost a
20 year ago, way back in January of this year, and that
21 settlement received final approval in August. So even if
22 we get data in December, the DPPs still would have waited
23 four months after final approval before we can even start
24 this process of distributing the settlement.

25 That's why we need this data. These DPPs are

1 small and medium companies for the most part. They're in
2 the middle of a double digit and rising inflation. They
3 could really use this money right now, and the only reason
4 we're waiting is to get this undisputed structured data.

5 MAGISTRATE JUDGE DOCHERTY: Mr. Hartley, let me
6 jump in with a question right there about something you
7 just said that seemed to me to tie distribution of funds to
8 receipt of structured data.

9 Do I take it from that that the settlement with
10 JBS had a formula that tied compensation in the settlement
11 to what you might find in structured data, or can you
12 elucidate or elaborate a little?

13 MR. HARTLEY: Certainly, Your Honor. The way the
14 settlement fund will be distributed will be on a pro rata
15 basis according to the amount and dollars purchased by each
16 of the class members who remain in the class.

17 MAGISTRATE JUDGE DOCHERTY: Okay. Thank you.

18 MR. HARTLEY: So we need that data to know what
19 the allocation should be, and we intend to prepopulate
20 claims forms with that data. Now, it is important to note
21 JBS was miraculously able to get us their data. We have
22 JBS's data, so really we're only talking about, again, the
23 undisputed structured data from National Beef, Tyson and
24 Cargill.

25 Now, we understand from defendants that one

1 reason they haven't given it to us yet and one reason they
2 want to push the schedule even further from December 15th
3 is that they are busy negotiating search terms, and our
4 response to that is twofold.

5 One, we think it was a bad idea and certainly not
6 best practice to even implement search terms to pre coal
7 before tar, but besides that, what we're talking about is
8 undisputed structured data. This doesn't require any more
9 outside attorney time to pull.

10 You know, the outside attorneys aren't going into
11 the, you know, the data systems of the clients and pulling
12 this data. It's the IT people at these different
13 defendants' companies. So we don't think that outside
14 counsel being busy on other projects should delay again
15 this production of the undisputed structured data.

16 We understand that the entrance of the DAPs had
17 affected the schedule that was in place, but we have a
18 couple responses to that. Number one, the DAPs' request,
19 which they haven't even made yet, Your Honor. This is a
20 total phantom request. DAPs don't even know what they want
21 yet, would be entirely unrelated to the structured data
22 that we're looking for because the only potential dispute
23 beyond the data we want that the DAPs want concerns further
24 processed data that they may want, you know, data
25 concerning further processed beef products.

1 And JBS has already produced their data.
2 National Beef doesn't make any further processed products,
3 so it's not an issue for them, and with respect to Tyson
4 and Cargill, the further processed data, that is the data
5 concerning the further processed beef products, are either
6 partially or entirely held within separate databases from
7 the case-ready and boxed beef data that we have already
8 agreed to and is undisputed.

9 So that's my first response to the claim that the
10 DAPs coming in and the absence of a schedule affects this.
11 The other response is that even though there is no
12 schedule, the Court clarified at the last status conference
13 that its stay of the case was not intended to be a full
14 stop on document sharing.

15 And this was clarified by the Court in its PTO
16 number 1, and it specifically said the parties should
17 continue trading documents. So we don't see why there is
18 any change from just a month ago when defendants themselves
19 committed and chose the December 15th date.

20 Our class members have been waiting a long time
21 to get a distribution, and the only delay at this point is
22 getting that data from Tyson, Cargill and National Beef.

23 MAGISTRATE JUDGE DOCHERTY: All right. Thank
24 you.

25 Ms. Horrell?

1 MS. HORRELL: Good morning, Your Honor.
2 Defendants think this agenda item is a little premature.
3 The first we heard of it was on Tuesday. Essentially
4 everything that Mr. Hartley just said is news to me in
5 terms of their consideration of what they want and why they
6 want it.

7 The parties are submitting briefing over the next
8 few weeks about a case schedule, in light of any changes
9 requested by the DAPs, and importantly, defendants aren't
10 saying they will not make -- that's a double negative.

11 Defendants are not refusing to make structured
12 data productions next month, and we have said that to
13 plaintiffs in the limited time we have had to meet and
14 confer about this since hearing about it this week.
15 However, we do have concerns about a deadline to complete
16 structured data productions in the middle of December
17 despite having proposed that about a month ago.

18 Defendants have been, as Mr. Hartley referenced,
19 have been expending an inordinate amount of time
20 negotiating over unstructured search terms. That does take
21 attorney time. That takes in-house resources and time, and
22 so we want time to evaluate whether a December 15th
23 deadline for completing structured data is still
24 appropriate or not.

25 We raised in the limited time we've had --

1 MAGISTRATE JUDGE DOCHERTY: I'm sorry to
2 interrupt. Didn't Mr. Hartley, though, say that search
3 terms should not impact this because there is nothing
4 really to search. As I understand what Mr. Hartley was
5 saying, there is a set of data that is, I got the
6 impression, sort of ready to go, and therefore search terms
7 were not really material to the timing of the production.

8 MS. HORRELL: Search terms do not apply to
9 unstructured data, that is true, but what is not true is
10 whether it requires resources internally from clients to
11 respond to both prepare unstructured data productions,
12 which in these cases are incredibly complicated given the
13 number of systems that the clients have in place.

14 It took, just for background, it took the parties
15 six months to negotiate the scope of the structured data
16 productions, and our clients have been working on making
17 those productions. We're not saying that productions next
18 month aren't feasible.

19 What we want is time to consider that deadline,
20 and we were planning to discuss the deadline for completing
21 structured data deadline in our upcoming submission to the
22 Court on December 13th. The other thing I --

23 MAGISTRATE JUDGE DOCHERTY: What does the Court
24 have on this controversy because I saw this on the joint
25 agenda that was submitted on the 15th, so that would be

1 Tuesday, and in the docket at least of the master MDL
2 docket, which is 22-3031, I didn't see a lot of the things
3 that both you and Mr. Hartley are talking about. I'm
4 looking for a writing on them and not finding them.

5 The only thing that I've got in terms of
6 structured data on that docket is a while back. It's an
7 order on a motion to compel that I issued in the middle of
8 October that swept in both some structured and some
9 unstructured data.

10 So where, as I'm listening to you and to
11 plaintiffs' counsel, I'm not finding -- and maybe I just
12 need some direction -- where it is that the underlying
13 documents are.

14 MS. HORRELL: Your Honor, this has not been teed
15 up for the Court, and so we would suggest more time to
16 discuss among the parties is appropriate. We think there
17 may not be much of a dispute that needs to be brought to
18 the Court.

19 And defendants were planning to address any
20 adjustments that need to be made to this particular
21 proposed deadline in our written submission to the Court
22 that is now due December 13th. We can certainly meet and
23 confer about that in advance and in the near term with
24 plaintiffs and can report back to the Court if that would
25 be helpful to Your Honor.

1 MAGISTRATE JUDGE DOCHERTY: Okay. And is it
2 correct, though, that this was something you undertook to
3 provide in September and then that had to slide to the
4 beginning of December. Now it's the middle of December.

5 And have you communicated a new due date to
6 plaintiffs, or is this just -- because when you say we need
7 time to consider the deadline, I'm not sure exactly what
8 that means.

9 MS. HORRELL: Your Honor, we were told on Tuesday
10 that plaintiffs wanted to add this as an agenda item to the
11 conference. We have been, as I mentioned, very busy
12 working on the unstructured data negotiations. We have not
13 had time to fully flesh this out with plaintiffs, and so we
14 have not discussed a specific deadline with them.

15 So I think more time to confer would be
16 appropriate.

17 MAGISTRATE JUDGE DOCHERTY: Let me turn back to
18 Mr. Hartley.

19 Mr. Hartley, it sounds to me like this is
20 something that you and Ms. Horrell and your teams should
21 talk about, and then it should get teed up because, as I
22 say, at first I was quite puzzled and wondered what I was
23 missing and what I was doing wrong that I couldn't find
24 papers on this, and now I realize that that's because there
25 aren't any.

1 Is this something that you can talk about and get
2 it in to, if it needs judicial intervention, get it in
3 Horrell's words teed up for a judge to act upon?

4 MR. HARTLEY: Your Honor, we didn't understand
5 until a couple weeks ago that defendants weren't going to
6 honor the date they themselves committed to, which has been
7 pushed three times already to mid-December. So there
8 wasn't really an opportunity or a chance in terms of timing
9 to raise this issue in briefing with the Court.

10 MAGISTRATE JUDGE DOCHERTY: I understand that
11 point, but it sounds a bit like you maybe wanted to quickly
12 get this on the agenda for this morning's case management
13 conference. You've done that. I am now aware of the
14 issue, but I don't know that there is anything that I could
15 do either right now or even in the very short term on this
16 without having, you know, a proper dispute before me.

17 MR. HARTLEY: We're talking -- I appreciate your
18 frustration, Your Honor, and I share it because, again,
19 we're talking about undisputed structured data that
20 defendants had committed to producing by now, and I with
21 all due respect haven't heard anything from Ms. Horrell as
22 to what has changed in the last four weeks that should
23 justify moving this deadline.

24 By the way, we have pressed defendants for at
25 least some date certain, if it's not going to be December

1 15th, and they claim they can't do that. So we would like
2 the Court at least to give a date certain for the
3 production of this data that we have been waiting for for
4 years.

5 You know, we -- normally when I have a settlement
6 in a class action like this, we move to get the data right
7 away from all the defendants, and judges almost routinely
8 order that. We waited patiently for this in order for all
9 the plaintiffs to be together and not to jam defendants to
10 make a special production for the DPPs.

11 Now we're getting, you know, my class members are
12 missing the opportunity to get the result and the
13 distribution from their settlement at a time when they
14 really could use that money.

15 MAGISTRATE JUDGE DOCHERTY: Okay.

16 MR. HARTLEY: So at least let's get a date.

17 MAGISTRATE JUDGE DOCHERTY: So here's what I am
18 prepared to do this morning: I want you and Ms. Horrell to
19 talk about this.

20 Ms. Horrell, I want you to communicate a date by
21 which this material will be produced, and if, Mr. Hartley,
22 that date is too far out in the future, then let's get this
23 into a proper form for a judge to act upon because I
24 cannot, I will not act upon what I'm hearing right here
25 this morning.

1 So this need -- there is a way of getting a judge
2 involved in your dispute when you can't settle it yourself.
3 It's not being followed here, and I'm afraid it needs to
4 because there is -- I'm not -- if I said something now I
5 would be talking right off the top of my head, and that's
6 not something I really want to do.

7 MR. HARTLEY: All right, Your Honor. We will do
8 that.

9 MAGISTRATE JUDGE DOCHERTY: All right? Meet and
10 confer, can you do it by next week and talk this through?

11 MR. HARTLEY: I have some availability next week.
12 I will talk with Ms. Horrell, and we will coordinate.

13 MAGISTRATE JUDGE DOCHERTY: Okay. Thank you.

14 MS. HORRELL: Thank you.

15 MAGISTRATE JUDGE DOCHERTY: Judge Tunheim,
16 anything that you wish to add to this?

17 THE COURT: No. That sounds good. Thank you.

18 MAGISTRATE JUDGE DOCHERTY: Okay.

19 THE COURT: So we also wanted to chat briefly
20 about, I see there is three new cases that have appeared on
21 the docket, a transfer from Kansas and two from Eastern
22 District New York.

23 Anything we need to talk about the new cases?

24 MR. IOVIENO: Not from the DAPs' perspective,
25 Your Honor.

1 THE COURT: Okay. Very well. So I think we
2 talked last time about Mr. Iovieno being liaison counsel
3 for the DAPs, which I wanted to have a liaison counsel. I
4 assume that's still the recommendation, and nothing has
5 changed there?

6 I know that you have joined the case more
7 directly now with one of your cases being transferred in.
8 Anything you would like to say about that, Mr. Iovieno?

9 MR. IOVIENO: No. That is correct, Your Honor.
10 One of our cases is transferred, and another one will be
11 shortly, and on behalf of the DAPs to have me serve as
12 liaison, we had put on the agenda to discuss the liaison
13 issue in light of the order in Pork.

14 But we were all on the Pork call and heard the
15 argument, and I don't think anything further needs to be
16 addressed. We just put it on there in case you wanted to
17 address something in this case as well.

18 THE COURT: Okay. And that's certainly fine with
19 the Court, so unless there is an objection from any of the
20 DAPs, we will go forward with that, and we'll issue a quick
21 order on that.

22 All right. On liaison counsel for the plaintiffs
23 and the classes, I have a recommendation from the Consumer
24 Indirect Purchaser Plaintiffs to recommend Shana Scarlett,
25 and then the Direct Purchaser Plaintiffs nominated Michelle

1 Looby, and the Cattle plaintiffs recommended Rick Paul.
2 I'm not sure I've seen any recommendation yet from the
3 Consumer and Indirect Institutional Indirect Purchaser
4 Plaintiffs.

5 Did I miss anything there?

6 MR. FINLEY: I believe so, Your Honor. I filed
7 some papers earlier this week on the docket for our group.

8 THE COURT: Yesterday?

9 MR. FINLEY: I will pull up the docket entry
10 shortly, Your Honor.

11 MR. MCGAHAN: Judge, Mr. Finley's filing is ECF
12 74.

13 THE COURT: Okay. So we do have a
14 recommendation?

15 MR. FINLEY: Yes, Your Honor.

16 THE COURT: Yes, sir.

17 MR. MCGAHAN: Your Honor, may I clarify one
18 point?

19 COURTROOM DEPUTY: Could you speak up. You're
20 very muddled. Maybe get closer to your mic.

21 MR. MCGAHAN: Is that better?

22 COURTROOM DEPUTY: Better but slow and steady.
23 Thank you.

24 MR. MCGAHAN: I will try.

25 THE COURT: Go ahead.

1 MR. MCGAHAN: With the entry of the new cattle
2 indirect cattle seller --

3 COURT REPORTER: Mr. McGahan. Mr. McGahan, this
4 is the court reporter. I cannot understand you, so even
5 though you are speaking slowly --

6 THE COURT: It's just a little muddled.

7 MR. MCGAHAN: I'm very sorry. I'm having audio
8 issues this morning. Is that better?

9 COURTROOM DEPUTY: It is. Thank you.

10 MR. MCGAHAN: I apologize for speaking on my
11 phone as such.

12 So with the new class action that has been
13 transferred from Kansas, there is now two classes of cattle
14 sellers. There is the preexisting class for whom we
15 represent, which are the direct fed cattle sellers, the
16 people that sell fed cattle directly to the defendants in
17 the In Re: Cattle matter for which our group has proposed
18 that I act as liaison counsel for, and I believe that is
19 ECF 72.

20 And then there is also the Specht action, which
21 is one of the new tag-along matters, which I believe at ECF
22 80, that group proposed Rick Paul as the liaison counsel.
23 Now Sean Cooper is here on behalf of them. I'm sure he can
24 clarify as well.

25 THE COURT: All right. Anyone else want to speak

1 on this?

2 MR. FINLEY: And, Your Honor, just to reconfirm.
3 My group did in fact file a letter at ECF 77, and that's on
4 docket 22MD3031.

5 THE COURT: Okay. So we've got another separate
6 class now in the new case that's been transferred?

7 MR. COOPER: Yes. Good morning, Your Honor.
8 This is Sean Cooper. I am Rick Paul's partner who we have
9 proposed as liaison counsel for a separate sell side
10 indirect selling class that has been tagged and dragged now
11 from District of Kansas.

12 THE COURT: Okay. All right. So we probably
13 need separate, a separate liaison counsel here.

14 MR. COOPER: Yes, Your Honor. We proposed my
15 partner Rick Paul. He is in transit this morning so
16 unfortunately couldn't join us.

17 THE COURT: Okay. All right. Okay. Anything
18 else on this? We'll get an order out with just a list of
19 responsibilities. It's a little different than in other
20 kinds of, types of MDLs, but I do think there is a role for
21 liaison counsel here to help make sure everything moves
22 forward correctly.

23 So okay. The other issue that is on the agenda
24 today, we have talked about whether there should be a
25 master consolidated complaint in this case. The defendants

1 are arguing that it's essential. I think there was an
2 argument that the DAPs suggested maybe not necessary in
3 this case.

4 Let's have any argument you wish to make today,
5 and we will get this wrapped up. Defendants, someone wish
6 to argue on that point?

7 MS. HORRELL: Your Honor, this is Holly Horrell.
8 I was not aware this would be an agenda item today. I
9 believe the defendants reviewed their position at the last
10 conference. If Your Honor has questions about it, I can do
11 my best to field them.

12 THE COURT: You are still arguing strenuously in
13 favor of a master consolidated complaint, I take it?

14 MS. HORRELL: We are, Your Honor.

15 THE COURT: With sort of a short form complaint
16 for any individual Direct Action Plaintiff?

17 MS. HORRELL: That's right, Your Honor.

18 THE COURT: Okay. All right. Anyone on the
19 other side on this one want to argue?

20 MR. IOVIENO: Your Honor, this is Phil Iovieno.
21 We also were not aware of this being an agenda item today.

22 THE COURT: Yeah. It's my fault. I added it.
23 Okay. I want to get this resolved.

24 MR. IOVIENO: No. It continues to be our view
25 that it's not necessary. If you would like us to put in a

1 short writing as to the reasons, but we think the
2 complaints are -- first of all, there is just not that many
3 DAPs in this case compared to the others. There is
4 probably maybe 20 percent of the DAPs that are in Chicken
5 or some of the other cases where there has been a master
6 consolidated complaint, so we don't think it's necessary
7 here.

8 Obviously if the Court prefers it, we will do it
9 but we just think that in this case it's just not
10 necessary.

11 THE COURT: Okay. I don't think I need any more
12 writing on it unless anyone wants to submit anything in
13 writing. I will take a quick look at this, and we will
14 issue an order next week on this.

15 If there is a master consolidated complaint, we
16 will suggest a deadline, and you can argue whether that's
17 sufficient or not. Okay?

18 MR. RASHID: Your Honor, if I could just be heard
19 on this topic briefly?

20 THE COURT: Sure, Mr. Rashid.

21 MR. RASHID: I think it would just be helpful
22 perhaps for Your Honor in considering whether a master
23 consolidated complaint makes sense now or perhaps later
24 would be to get a sense of the number of DAP cases that may
25 be filed.

1 I think as you heard at the Pork status
2 conference, there is a lot of the same law firms that
3 represent a lot of the same DAPs in these cases, so I think
4 they would have a pretty good sense of what might be coming
5 down the pike here, and that may inform how Your Honor
6 wants to proceed.

7 THE COURT: All right. Good point. Thank you,
8 Mr. Rashid.

9 MR. KAPLAN: Your Honor, Robert Kaplan. I would
10 just like to point out there already is an answer to one of
11 the DAP complaints, the Giant Eagle complaint, and also the
12 defendants provided affirmative defenses.

13 THE COURT: All right. Anyone else? Okay. We
14 will get on this right away. Any other issue to discuss
15 today?

16 All right. Well, thank you all for gathering.
17 We will set our next status conference also by Zoom. Since
18 we have a set date for Pork on the 15th of December at two
19 o'clock, perhaps we can set this at, for Beef, at three
20 o'clock that afternoon. It makes it easier for everyone
21 because there is a lot of overlap.

22 Does anyone object to that as being our next
23 status conference?

24 All right. Let's go ahead and do that. We will
25 put that on the calendar and schedule it. All right.

1 Thank you, everyone, for joining us today, and I appreciate
2 your joining us by Zoom. It's a lot simpler and easier to
3 schedule, and I know it sure saves on travel.

4 So from our perspective it's working well, so we
5 will continue to do this. Thank you, all.

6 MR. HARTLEY: Thank you, Your Honor.

7 MS. HORRELL: Thank you, Your Honor.

8 THE COURT: We will be in recess.

9 **(Court was adjourned.)**

10 * * *

11 I, Kristine Mousseau, certify that the foregoing
12 is a correct transcript from the record of proceedings in
13 the above-entitled matter.

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17 Certified by: s/ Kristine Mousseau, CRR-RPR
18 Kristine Mousseau, CRR-RPR

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